

**BROWNFIELDS STUDY GROUP  
MEETING  
NOVEMBER 30, 2004**

**I. Attendees**

John Angeli, city of Fond du Lac  
Kevin Brehm, STS Consultants  
Margaret Brunette, DNR  
Brian Burke, Zigman, Joseph & Steph.  
Leslie Busse, BT2, Inc.  
Laurie Egge, DNR  
Eric Englund, WI Insurance Alliance  
Darsi Foss, DNR  
Nancy Frank, UW-Milwaukee  
Mark Giesfeldt, DNR  
Chris Gower, Arjo Wiggins  
Maureen Hubeler, DNR  
Bob Jentz, DRS  
Kate Juneau, Natural Resource Tech.  
Bruce Keyes, Foley & Lardner  
Larry Kirch, City of LaCrosse  
Dan Kolberg, DNR  
Christine Mangi, Zigman, Joseph & Steph.

Percy Mather, DNR  
Dave Misky, City of Milwaukee  
Tom Mueller, TEMCO  
Henry Nehls-Lowe, DHFS  
Joshua Neudifer, Sigma  
Laurie Parsons, Natural Resource Tech.  
Dan Pelczar, HNTB Corporation  
Peter Peshek, DeWitt, Ross & Stevens  
Michael Prager, DNR  
Al Rabin, Dept. of Commerce  
Ron Ragatz, DeWitt, Ross & Stevens  
Bruce Ramme, We Energies  
Andrew Savagian, DNR  
Lynn Scherbert, Ayres Assoc.  
Jim Schmidt, DNR  
John Stibal, City of West Allis  
Joy Stieglitz, Vandewalle & Assoc.  
Sam Tobias, Fond du Lac County

**II. Welcome, Introductions, Agenda Repair**

**III. All Sums Insurance – Discussion Item**

Peter Peshek and Ron Ragatz from DeWitt, Ross & Stevens, along with Chris Gower from Arjo Wiggins presented information on All Sums Insurance; mostly background, but also their recommendation for legislation to deal with the issue of All Sums

Eric Englund from the Wisconsin Insurance Alliance also presented information on All Sums, as well as his organizations stand that legislation is not necessary, and the courts should continue to decide the issue

Ron Ragatz: The concept of All Sums does not cover everything; for example, if you have a “long-tail claim,” i.e. 10 years, how do you allocate the loss among those 10 years, among those policies? How do you split up the insurance among all the parties? The All Sums says you can go to one insurance company and ask them to pay for the loss, and the insurance company can go to the others and get that cost; which “removes” the insurer from the problem/issue/getting the money

Ragatz: The Wisconsin Court of Appeals decided not to hear a case related to All Sums, so it could be a while before the courts decide; other states legislatures and courts have dealt with this issue ( Minnesota, Michigan, Illinois and Oregon)

Ragatz: An insurer has the right to pick an insurance company to compensate them and let that company and the other companies figure out how that works

Darsi Foss: So, to put it in lay terms, a family business can be around for 50 years and it wants to expand; however, drums were found, so they hire a consultant and find an old policy that was pre-1986; before this legislation, how would I deal with it, and how would I deal with it after the legislation?

Ragatz: Let's assume their excavating for the new building and contamination has been released into the ground; there's an issue when that release occurred; let's assume it started in 1975 and you have policies that go back to 1986; Wisconsin courts have ruled that all policies back to 1986 are "triggered" and should be covering; the new legislation says the insurer can pick the company that has to pay and say "you go chase the other insurance companies."

Bruce Keyes: What if there are three companies, say I go after AIG, what if there's an insurance company that doesn't exist? Would AIG go after that defunct company?

Ragatz: Under this legislation, AIG would be left with a shortfall as far as it's monies for those particular years, or not be able to get full compensation for their share

Chris Gower: My interest is with the Fox River; it has been difficult to get our insurance companies to pay their fair share; we found this issue to be a stumbling block; the policy says the company will pay "all sums"; we felt we have policies, we expect the companies to respond to the claims

Eric Englund: We do recognize this group as a "thoughtful place" to discuss issues; I'd like to talk about the overall, broader public policy issue; Why am I here? Because this is an important issue, of course; cleanup is also a big issue and the biggest question is: Who's going to pay? Who's got the money? Insurance is a place to look and will continue to be a place to look for that funding

Englund: The big issue is what's fair and equitable and what's been contracted for; the key of course is the past, looking back about twenty years, from 1954-1974, to try and figure out what those contacts said and didn't say

Englund: There's one place you go to have those tests answered, and that's the courts; yes, this will take time, we acknowledge that, but it's the best system we have; to throw this to the legislature will only delay the process of cleanup with the Fox River

Englund: We existed for more than 10 years with the Edgerton case; now it's an issue for the courts; we don't think it's the business of the Wisconsin Legislature to wade into these contracts and pick sides; from a public policy side we believe it's bad public policy

Foss: What's happened in Oregon?

Ragatz: They passed the legislation last year, we know there have been challenges based on constitutionality on cases already on appeal

Group discussed the background of the Oregon legislation

Michael Prager: It's not always clear when the pollution happened, and a company or companies may now be gone; one of the questions may be will many brownfields even be impacted at all, or is this an issue that will go with the BIG brownfield sites with lots of actors?

Keyes: I'm really not sure if this would benefit a middle-class brownfield; isn't it just a matter of does the insurer have to sue one or a multiple of companies? What's the net impact?

Peter Peshek: This issue is of immense interest to municipalities, especially in reference to landfills

Tom Mueller: Whom goes after the string of insurance companies? I think the devil is in the details; Are there ways to protect the diminimised insurance coverage? Who gets nailed with the entire liability and who pays for going after the cost recovery in relation to the insurance industry?

**No decision by Study Group; state legislation may be coming quickly; the bill draft is with Sen. Robert Cowles (Senate) and Rep. Dean Kaufert (Assembly); it is possible at the next Study Group meeting the issue will be on the agenda**

#### **IV. New Market Tax Credits – Discussion Item**

Farshad Maltes from the WI Housing and Economic Development Association (WHEDA) and John Stibal with the city of West Allis, gave presentations on New Market Tax Credits and how they can be used for brownfield projects

Maltes: New Market Tax Credits are useful tools to help finance brownfield projects; WHEDA and Legacy Bancorp have received an allocation of \$100 million in tax credits, however, there is a \$6 billion national allocation of these tax credits, which can be used anywhere in the U.S. regardless of where the funds were originally allocated to

Maltes: Properties must be in an economically distressed census tract to qualify for funding; information about brownfields qualifying for new market tax credits is available on the U.S. Treasury Department's Community Development Financial Institutions Fund (CDFI) web site at <http://www.cdfifund.gov/>

Farshad's contact information: Farshad Maltes, 608-267-4543, [farshad.maltes@wheda.com](mailto:farshad.maltes@wheda.com); John's presentation is available at the following link: <http://www.dnr.state.wi.us/org/aw/rr/rbrownfields/bsg/index.htm#04meetinginfo>

#### **V. Updates**

##### Brownfields Study Group Budget Letter

Bruce Keyes and Darsi Foss reviewed the letter; Study Group members have already provided input via email, and the letter was signed by Bruce on behalf of the Study Group and will be delivered to the governor's office and various state agencies later in the week

### Brownfields Legislation Update

Foss: All legislation the Study Group recommended and approved is over at Sen. Carol Roessler's office; she may ask us to prioritize the key recommendations; also, due to their nature, some items are dually in both letter and in the legislation

### Proposed WI Brownfields Insurance Program (WBIP)

Michael Prager gave a brief history of the WBIP; Legislature passed a bill that authorized state to create the program; Kenn Anderson from Arthur J. Gallagher, the state's broker, briefed the Study Group in September

Prager: The state received four proposals, and we've narrowed it down to two companies; still trying to pick out the best one; there are minor advantages and disadvantages to both proposals; we hope to choose a final company in about a month or so and start working on the details in early 2005

Prager: The goal of the program is to provide environmental insurance for brownfield projects in a streamlined manner at a lower cost; we hope it'll be a privatized endeavor and that it will be available for use in the spring

### Menomonee Valley Cleanup/Redevelopment

Dave Misky from the city of Milwaukee and Margaret Brunette from the DNR gave an update on the progress in the Valley; the west end of Valley (the "shops properties) environmental cleanup is complete; the plan is to develop a light industrial park, greenspace and a stormwater retention area

Misky: Next spring when the Marquette Interchange reconstruction gets going, a great deal of the fill there will go on the former shops properties; they'll build it up eight feet and get it out of the floodplain

Misky: Also talked about tying together the various parts around the Valley, Miller Park, the north and south neighborhoods, the east end, etc.; we'll use DOT monies, even some that are connected to the Marquette Interchange, so people can use the Canal Street extension

Brunette: We'll still monitor the fill going onto the site, as well as post-construction groundwater monitoring; there's a very detailed capping plan, we made sure we had a good clean separation between groundwater and what's being put on top; we also wanted to make sure the asbestos stays on public property, so it stays in the city's control and on their deed restriction

Misky: The DOT will save millions of dollars by our taking the Marquette Interchange fill, and we'll save millions of dollars by not having to find fill, characterize it, geo-tech it, etc.

Mueller: Are you using VPLE on the parts you're looking to sell?

Misky: No, we're dealing with subsurface sewer and hotspot issues right now, so the areas will be clean, with clean material, so it should not be necessary

Peshek: What's the surface water/fisheries plans?

Misky: We're just beginning with that step/process; just had a meeting with DNR on this issue; fisheries are coming back; the Hank Aaron trail will help with public access to the river/fishing

Keyes: Just something to note – the additional Commerce money that went to the Menomonee Valley Partners were used to acquire sites that have sat idle for years (e.g. Morton Salt property becoming the new Harley museum)

## **LUNCH**

### **VI. Introductory Items**

#### Stormwater Runoff Control

Keyes: I live in an area with a Combined Sewer Overflow, and the Milwaukee Metropolitan Sewerage District (MMSD) has a serious problem with runoff; we have remedies from DNR that, to prevent groundwater infiltration, we build structures like parking lots, yet parking lots create runoff; so how do we find ways for these two issues to mesh together

Foss: This has come up in the agency before; doesn't say in NR 720 "Here are your options"; also, it may not be an issue in other parts of the state?

Keyes: Maybe, but should we talk to DNR water staff?

Misky: What we've seen in addressing this issue is project by project; city and state do not have specific regulations or rules on this; we've seen some very creative things

Brunette: At Miller Park there's a lot of issues with the air program; we need to start thinking up front ahead of time, lots of things you can look at that will be protective of the environment in many ways

Joy Stieglitz: Not sure if this is a DNR/state issue, and might be less of an issue in other parts of the state; there are myriad solutions and always one that is the cheapest, and unless someone says you MUST look at something that may cost more and help the environment, often parties will choose the cheapest solution; I think it is more of a city/county issue and not a DNR issue; the question is can you champion that and how do you champion that?

Foss: Seems like what we're talking about is similar to Green Tier laws, which are about superior environmental performance; how do you bring in all these other issues, what kind of things could we promise them?

Stibal: I like the concept of that idea that putting together more green building the better off we are for grants, for economic reasons, etc.; the cost is minimal, an additional 5 percent

Nancy Frank: Wisconsin Green Building Alliance has a lot interesting information up on their web site

Keyes: Men. Valley Partners are also looking into this

Misky: Peter McAvoy is setting up a meeting with Chicago and Milwaukee on green building; Chicago Mayor Daly put a green roof on a city building; we've learned it can be as little as 0-3% additional cost

### **No Decision By Study Group**

### Vapor Intrusion

Keyes: I'm working with a site, a former dry cleaning site that is now a coffee shop; vapor intrusion is an issue that's increasingly coming to the forefront with DNR; we now know that with groundwater issues you can't get closure if you need something like the active vapor-mitigation system we have in place; we need to know what the measure of performance is, what the road map to completion is, and what work needs to be completed

Henry Nehls-Lowe: A similar idea takes place with radon mitigation; with contamination, now you've got vapors that are creating a bigger risk than what was previously thought

Keyes: In the last six months to a year, on an increasing basis, we've discussed with DNR the issue of vapor intrusion; and once the issue got raised, there wasn't a clear answer to what we needed to do to solve the problem

Mueller: I agree, we've come up with this issue with a site in Milwaukee; we should have some thought with this and some guidelines, especially on chlorinated sites if we're going to keep running into this

Mark Giesfeldt: We've had discussions internally but nothing was ever finalized; we've been working with this on a case-by-case basis

**DNR will have an internal discussion and get back to the Study Group about site closures with vapor intrusion issues, as well as address the issue of guidance for staff and the public on the following issues: taking vapor intrusion samples during the site investigation; whether a level or range can be developed to offer guidance on safe levels indoors; and whether or not a site can be closed if an active venting system is running**

## **VII. State, Federal Updates**

### Commerce Brownfield Grants

Al Rabin gave a summary of Commerce brownfields grant programs; examples of some sites include one in the city of Neenah, creating 450 jobs

Stieglitz: Did you give out money to fully fund the grants?

Rabin: It's really challenging to make the money go around; Neenah and Racine both asked for more than what they received

### EPA – Brownfields Grants, One Cleanup Program

Percy Mather gave a brief background on the Wisconsin Brownfields Coalition Revolving Loan Fund from EPA; the cleanups will be done following NR 700; the coalition plans to create RLF using 60 percent of those funds

Mather: Zero interest for loan recipients, and you need to provide a match; for the entire program that equals \$800,000; you also have 23 years to pay back; the other 40 percent are for grants; you also need to meet certain federal requirements, due diligence, CERCLA, etc.

Mather: We hope in early 2005 we will have an application process setup; should be firming up the details of the criteria and other loan issues in the next few months

Andrew Savagian: How many new EPA grants do you have?

Mather: There were about 15 submitted for this round of EPA brownfield grants

Mather also gave update on One Cleanup Program; just have a couple of issues remaining before we have an agreement; upgraded from a Memorandum of Understanding to Memorandum of Agreement; working with EPA headquarters people in the next month

#### DNR Brownfields SAG Program

Prager: We received 76 applications for \$3.1 million; \$1.5 million for large grants and a bit more for small grants; applications will be scored and ranked because we only have \$1.4 million to give out; we hope to have awards announced in February

Mueller: Please have there be a difference with the grant submissions between you and EPA

#### DNR and 30<sup>th</sup> St. Corridor Partnership

Foss: Special thanks to Brenda Holly, Bev Craig, Laurie Egge and Percy Mather for their effort: this grant is for one of the harder economically-challenged areas; 230 contaminated sites in that corridor alone; highest tax delinquent sites in the city;

Foss: We put in two grants, one for \$200,000 for assessment and another \$200,000 for cleanup; the DNR would be administering the grant and spending the money; we'll partner with city staff on the work, and the industrial corridor would choose the sites

### **VIII. Information Session On WI Brownfields Coalition's \$4 Million Revolving Loan Fund – Program Framework (meeting participants were encouraged, but not required, to attend this final discussion)**

Foss: We won't be writing rules for this, but have to work within EPA's framework for this program; discussed whether we do loans first and then grants; reason we might want to do loans first is we have a 20 percent match total that equals \$800,000; so if we get one party asking for a loan of a \$1M and gets \$500K match, that takes care of a big chunk of the match

Stieglitz: Rather than closing the door to doing grants initially and focusing first on loans; if you're developing criteria and looking at projects on a competitive basis, you might want to contemplate scoring someone higher that are asking for not just free money but also a loan; might get more bang for your buck if you're leveraging some of your grant money with loan dollars

Rabin: This is giving us an opportunity to work together; if all Commerce awards are all given out in February – and DNR can get copied on the award letters – it would be helpful to have that information available

Mueller: You should make the applicants tell you whether you have applied for a Commerce grant or not

Stibal: When do you think you'll start taking applications and when will you make decisions on the grants?

Foss: In the spring; and we'll try to be done as soon as possible; we hope to have pre-approval so that we can get to the meat of the application process and turn it around soon

Stibal: I think it's a good idea to do loans first; only because that deal is ready to go, versus a grant; but you should still take all the applications at once

Foss: We'd like to do the application as a single application for either a grant or a loan

Stibal: So how much for grants per site?

Foss: We're capped at \$200,000 per site, and the LGU or non-profit has to own the property; we're also looking at other current grants that already exist – Greenspace, Commerce, SUDZ, etc. – so we're not re-inventing the wheel; and you can use a portion of the grant to pay for environmental insurance

Mueller: For all kinds of insurance?

Mather: It would be on a case-by-case basis

Foss: Also, people who are ready to go – have the cleanup plan ready, many of the pieces in place – will have a better chance getting this money

Study group also brought up questions about how the timing of spending the Commerce money for cleanup costs in the contract period vs. when DNR gets the loan period

Maureen Hubeler: Since this is a revolving fund and they don't have to pay for five years, there's no money coming in until that time?

Foss: That's correct, but no communities are using this as a cash cow; EPA realizes this, hence the supplemental funding

**ADJOURN**